

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ODALIZ ORTEGA,)	CASE NO. 1: 20 CV 1461
)	
Plaintiff,)	JUDGE DONALD C. NUGENT
)	
v.)	
)	MEMORANDUM OPINION
COMMISSIONER OF SOCIAL)	AND ORDER
SECURITY,)	
)	
)	
Defendant.)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Kathleen B. Burke. (ECF #20) Plaintiff challenges the final decision of Defendant Andrew Saul, Commissioner of Social Security (“Commissioner”) denying her applications for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”). Magistrate Judge Burke found that the Administrative Law Judge erred because she failed to properly evaluate Plaintiff’s right shoulder impairment and whether a cane is medically necessary. Accordingly, Magistrate Judge Burke recommends that the Commissioner’s final decision be reversed and remanded for further proceedings consistent with the Report and Recommendation. (ECF #19) Following the issuance of the Report and Recommendation, the Commissioner filed a Response stating that he would not be filing objections to the Report and Recommendation. (ECF #21)

Standard of Review for a Magistrate Judge’s Report and Recommendation

The applicable standard of review of a magistrate judge’s report and recommendation

depends upon whether objections were made to that report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED R.

Civ. P. 72(b) states:

The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

The text of Rule 72(b)(3) addresses only the review of portions of reports to which timely objections have been made; it does not indicate the appropriate standard of review for portions of the report to which no objections have properly been made. The Advisory Committee on Civil Rules commented on the standard of review stating, "when no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72 advisory committee's notes (citations omitted).

The U.S. Supreme Court stated: "It does not appear that Congress intended to require district court review of magistrate judge's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to these findings." *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Here, no objection was filed by either party. Accordingly, this Court reviews the Report and Recommendation for a finding of clear error on the face of the record.

Conclusion

The Court has carefully reviewed the Report and Recommendation and agrees with the findings set forth therein. The Report and Recommendation of Magistrate Judge Burke (ECF #20) is ADOPTED. The final decision of the Commissioner denying Plaintiff's applications for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI") is REVERSED

and this matter is REMANDED to the Commissioner for further proceedings consistent with the Report and Recommendation.

IT IS SO ORDERED.



DONALD C. NUGENT
United States District Judge

DATED: July 13, 2021